

**Executive Summary – Enforcement Matter – Case No. 48092**  
**Bryan Iron & Metal, Ltd. dba Texas Commercial Waste**  
**RN103157715**  
**Docket No. 2014-0034-MSW-E**

**Order Type:**

1660 Agreed Order

**Findings Order Justification:**

N/A

**Media:**

MSW

**Small Business:**

Yes

**Location(s) Where Violation(s) Occurred:**

Texas Commercial Waste, 1820 North Harvey Mitchell Parkway, Bryan, Brazos County

**Type of Operation:**

Recycling facility

**Other Significant Matters:**

Additional Pending Enforcement Actions: No

Past-Due Penalties: No

Other: N/A

Interested Third-Parties: The complainant has expressed an interest in this matter but does not wish to speak at Agenda.

**Texas Register Publication Date:** May 9, 2014

**Comments Received:** No

***Penalty Information***

**Total Penalty Assessed:** \$16,250

**Amount Deferred for Expedited Settlement:** \$3,250

**Amount Deferred for Financial Inability to Pay:** \$0

**Total Paid to General Revenue:** \$13,000

**Total Due to General Revenue:** \$0

Payment Plan: N/A

**SEP Conditional Offset:** \$0

Name of SEP: N/A

**Compliance History Classifications:**

Person/CN - Unclassified

Site/RN - Unclassified

**Major Source:** No

**Statutory Limit Adjustment:** N/A

**Applicable Penalty Policy:** September 2011

**Executive Summary – Enforcement Matter – Case No. 48092**  
**Bryan Iron & Metal, Ltd. dba Texas Commercial Waste**  
**RN103157715**  
**Docket No. 2014-0034-MSW-E**

***Investigation Information***

**Complaint Date(s):** September 3, 2013

**Complaint Information:** Alleged the Respondent was not registered with the TCEQ and was not following the recycling rules.

**Date(s) of Investigation:** October 2, 2013

**Date(s) of NOE(s):** December 9, 2013

***Violation Information***

1. Failed to submit a notification to the Executive Director ("ED") prior to commencement of recycling operations. Specifically, the Respondent collected plastic bottles, plastic bags, glass bottles, and cardboard before submitting a notification [30 TEX. ADMIN. CODE §§ 328.5(b) and 330.11(e)(2)].

2. Failed to have a fire prevention and suppression plan and failing to make available a fire prevention and suppression plan to the local fire prevention authority [30 TEX. ADMIN. CODE § 328.5(h)].

3. Failed to establish and maintain financial assurance for the closure of a recycling facility. Specifically, financial assurance was not provided for approximately 8,000 pounds of plastic bags, 33,000 pounds of plastic bottles, 32,625 pounds of cardboard, and 57,100 pounds of glass bottles [30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d)].

***Corrective Actions/Technical Requirements***

**Corrective Action(s) Completed:**

N/A

**Technical Requirements:**

The Order will require the Respondent to:

- a. Immediately, cease accepting additional recyclable and combustible materials until such time that all requirements of a Notice of Intent for the Facility have been approved by the ED;
- b. Within 30 days, develop a fire suppression and prevention plan for combustible materials at the Facility and provide it to the local fire prevention authority; and
- c. Within 60 days, submit documentation that demonstrates acceptable financial assurance for closure of the Facility.

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Or:

d. Within 75 days, dispose of all recyclable and combustible materials at an authorized facility.

e. Within 90 days, submit written certification to demonstrate compliance with Ordering Provisions a. through c. or d.

***Litigation Information***

**Date Petition(s) Filed:** N/A

**Date Answer(s) Filed:** N/A

**SOAH Referral Date:** N/A

**Hearing Date(s):** N/A

**Settlement Date:** N/A

***Contact Information***

**TCEQ Attorney:** N/A

**TCEQ Enforcement Coordinator:** Thomas Greimel, Enforcement Division,  
Enforcement Team 7, MC 128, (512) 239-5690; Candy Garrett, Enforcement Division,  
MC 219, (512) 239-1456

**TCEQ SEP Coordinator:** N/A

**Respondent:** Ronald Schmidt, General Manager, Bryan Iron & Metal, Ltd., 1820  
North Harvey Mitchell Parkway, Bryan, Texas 77807

**Respondent's Attorney:** N/A





# Penalty Calculation Worksheet (PCW)

Policy Revision 3 (September 2011)

PCW Revision August 3, 2011

TCEQ

**DATES** Assigned **PCW** 9-Dec-2013  
10-Jan-2014 Screening 18-Dec-2013 EPA Due

## RESPONDENT/FACILITY INFORMATION

Respondent Bryan Iron & Metal, Ltd. dba Texas Commercial Waste  
Reg. Ent. Ref. No. RN103157715  
Facility/Site Region 9-Waco Major/Minor Source Minor

## CASE INFORMATION

Enf./Case ID No. 48092 No. of Violations 3  
Docket No. 2014-0034-MSW-E Order Type 1660  
Media Program(s) Municipal Solid Waste Government/Non-Profit No  
Multi-Media EC's Team Thomas Greimel  
Enforcement Team 7

Admin. Penalty \$ Limit Minimum \$0 Maximum \$25,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 \$16,250

## ADJUSTMENTS (+/-) TO SUBTOTAL 1

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

**Compliance History** 0.0% Enhancement Subtotals 2, 3, & 7 \$0

Notes No adjustment for compliance history.

**Culpability** No 0.0% Enhancement Subtotal 4 \$0

Notes The Respondent does not meet the culpability criteria.

**Good Faith Effort to Comply Total Adjustments** Subtotal 5 \$0

**Economic Benefit** 0.0% Enhancement\* Subtotal 6 \$0

Total EB Amounts \$263  
Approx. Cost of Compliance \$5,761  
\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal \$16,250

**OTHER FACTORS AS JUSTICE MAY REQUIRE** 0.0% Adjustment \$0

Reduces or enhances the Final Subtotal by the indicated percentage.

Notes

Final Penalty Amount \$16,250

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty \$16,250

**DEFERRAL** 20.0% Reduction Adjustment -\$3,250

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes

Deferral offered for expedited settlement.

**PAYABLE PENALTY** \$13,000

Screening Date 18-Dec-2013

Docket No. 2014-0034-MSW-E

PCW

Respondent Bryan Iron &amp; Metal, Ltd. dba Texas Commercial W

Policy Revision 3 (September 2011)

Case ID No. 48092

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103157715

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written notices of violation ("NOVs") with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	0	0%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgements or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events ( <i>number of events</i> )	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were submitted</i> )	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 0%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Unclassified

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance  
History  
Notes

No adjustment for compliance history.

Total Compliance History Adjustment Percentage (Subtotals 2, 3, &amp; 7) 0%

## &gt;&gt; Final Compliance History Adjustment

Final Adjustment Percentage \*capped at 100% 0%

Screening Date 18-Dec-2013

Docket No. 2014-0034-MSW-E

PCW

Respondent Bryan Iron &amp; Metal, Ltd. dba Texas Commercial Waste

Policy Revision 3 (September 2011)

Case ID No. 48092

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103157715

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

Violation Number 1

Rule Cite(s) 30 Tex. Admin. Code §§ 328.5(b) and 330.11(e)(2)

Violation Description Failed to submit a notification to the Executive Director prior to commencement of recycling operations. Specifically, the Respondent collected plastic bottles, plastic bags, glass bottles, and cardboard before submitting a notification.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR	Release	Harm			Percent
		Major	Moderate	Minor	
	Actual				0.0%
	Potential				

## &gt;&gt; Programmatic Matrix

	Falsification	Harm			Percent
		Major	Moderate	Minor	
		x			5.0%

Matrix Notes 100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 3 Number of violation days 77

mark only one with an x	daily	
	weekly	
	monthly	x
	quarterly	
	semiannual	
	annual	
	single event	

Violation Base Penalty \$3,750

Three monthly events are recommended based on documentation of the violation during the October 2, 2013 investigation to the December 18, 2013 screening date.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$3,750

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$228

Violation Final Penalty Total \$3,750

This violation Final Assessed Penalty (adjusted for limits) \$3,750

# Economic Benefit Worksheet

**Respondent** Bryan Iron & Metal, Ltd. dba Texas Commercial Waste

**Case ID No.** 48092

**Reg. Ent. Reference No.** RN103157715

**Media** Municipal Solid Waste

**Violation No.** 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs	\$5,000	2-Oct-2013	31-Aug-2014	0.91	\$228	n/a	\$228
Other (as needed)				0.00	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit a Notice of Intent to conduct recycling operations. The date required is the investigation date and the final date is the estimated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$5,000

TOTAL

\$228



Screening Date 18-Dec-2013

Docket No. 2014-0034-MSW-E

PCW

Respondent Bryan Iron &amp; Metal, Ltd. dba Texas Commercial Waste

Policy Revision 3 (September 2011)

Case ID No. 48092

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103157715

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

Violation Number 2

Rule Cite(s)

30 Tex. Admin. Code § 328.5(h)

Violation Description

Failed to have a fire prevention and suppression plan and failing to make available a fire prevention and suppression plan to the local fire prevention authority.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	x		

Percent 15.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent 0.0%

Matrix Notes

Human health or the environment will or could be exposed to pollutants and hazards which may exceed levels that are protective of human health and environmental receptors as a result of the violation.

Adjustment \$21,250

\$3,750

## Violation Events

Number of Violation Events 3

77

Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	x
quarterly	
semiannual	
annual	
single event	

Violation Base Penalty \$11,250

Three monthly events are recommended based on documentation of the violation during the October 2, 2013 investigation to the December 18, 2013 screening date.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

Before NOV NOV to EDPRP/Settlement Offer

Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$11,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$23

Violation Final Penalty Total \$11,250

This violation Final Assessed Penalty (adjusted for limits) \$11,250

# Economic Benefit Worksheet

Respondent Bryan Iron & Metal, Ltd. dba Texas Commercial Waste  
 Case ID No. 48092  
 Reg. Ent. Reference No. RN103157715  
 Media Municipal Solid Waste  
 Violation No. 2

Percent Interest 5.0  
 Years of Depreciation 15

Item Cost Date Required Final Date Yrs Interest Saved Onetime Costs EB Amount  
 Item Description No commas or \$

## Delayed Costs

Equipment				0.00	\$0	\$0	\$0
Buildings				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0
Engineering/construction				0.00	\$0	\$0	\$0
Land				0.00	\$0	n/a	\$0
Record Keeping System				0.00	\$0	n/a	\$0
Training/Sampling				0.00	\$0	n/a	\$0
Remediation/Disposal				0.00	\$0	n/a	\$0
Permit Costs				0.00	\$0	n/a	\$0
Other (as needed)	\$500	2-Oct-2013	31-Aug-2014	0.91	\$23	n/a	\$23

Notes for DELAYED costs

Estimated cost to develop and provide a fire suppression and prevention plan for combustible materials.  
 The date required is the investigation date and the final date is the estimated date of compliance.

## Avoided Costs

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.00	\$0	\$0	\$0
Personnel				0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.00	\$0	\$0	\$0
Supplies/equipment				0.00	\$0	\$0	\$0
Financial Assurance [2]				0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.00	\$0	\$0	\$0
Other (as needed)				0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$500

TOTAL

\$23

Screening Date 18-Dec-2013

Docket No. 2014-0034-MSW-E

PCW

Respondent Bryan Iron &amp; Metal, Ltd. dba Texas Commercial Waste

Policy Revision 3 (September 2011)

Case ID No. 48092

PCW Revision August 3, 2011

Reg. Ent. Reference No. RN103157715

Media [Statute] Municipal Solid Waste

Enf. Coordinator Thomas Greimel

Violation Number 3

Rule Cite(s) 30 Tex. Admin. Code §§ 37.921 and 328.5(d)

Violation Description

Failed to establish and maintain financial assurance for the closure of a recycling facility. Specifically, financial assurance was not provided for approximately 8,000 pounds of plastic bags, 33,000 pounds of plastic bottles, 32,625 pounds of cardboard, and 57,100 pounds of glass bottles.

Base Penalty \$25,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential			

Percent 0.0%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor
	x		

Percent 5.0%

Matrix Notes

100% of the rule requirement was not met.

Adjustment \$23,750

\$1,250

## Violation Events

Number of Violation Events 1

77 Number of violation days

mark only one  
with an x

daily	
weekly	
monthly	
quarterly	
semiannual	
annual	
single event	x

Violation Base Penalty \$1,250

One single event is recommended.

## Good Faith Efforts to Comply

0.0% Reduction

\$0

	Before NOV	NOV to EDPRP/Settlement Offer
Extraordinary		
Ordinary		
N/A	x	(mark with x)

Notes

The Respondent does not meet the good faith criteria for this violation.

Violation Subtotal \$1,250

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$12

Violation Final Penalty Total \$1,250

This violation Final Assessed Penalty (adjusted for limits) \$1,250

# Economic Benefit Worksheet

**Respondent** Bryan Iron & Metal, Ltd. dba Texas Commercial Waste

**Case ID No.** 48092

**Reg. Ent. Reference No.** RN103157715

**Media** Municipal Solid Waste

**Violation No.** 3

**Percent Interest** 5.0  
**Years of Depreciation** 15

**Item Cost** **Date Required** **Final Date** **Yrs** **Interest Saved** **Onetime Costs** **EB Amount**  
**Item Description** No commas or \$

## Delayed Costs

Equipment			0.00	\$0	\$0	\$0
Buildings			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0
Engineering/construction			0.00	\$0	\$0	\$0
Land			0.00	\$0	n/a	\$0
Record Keeping System			0.00	\$0	n/a	\$0
Training/Sampling			0.00	\$0	n/a	\$0
Remediation/Disposal			0.00	\$0	n/a	\$0
Permit Costs			0.00	\$0	n/a	\$0
Other (as needed)	\$261	2-Oct-2013	31-Aug-2014	0.91	\$12	\$12

Notes for DELAYED costs

Estimated cost to obtain financial assurance. The date required is the investigation date and the final date is the estimated date of compliance.

## Avoided Costs

**ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)**

Disposal			0.00	\$0	\$0	\$0
Personnel			0.00	\$0	\$0	\$0
Inspection/Reporting/Sampling			0.00	\$0	\$0	\$0
Supplies/equipment			0.00	\$0	\$0	\$0
Financial Assurance [2]			0.00	\$0	\$0	\$0
ONE-TIME avoided costs [3]			0.00	\$0	\$0	\$0
Other (as needed)			0.00	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance

\$261

**TOTAL**

\$12

The TCEQ is committed to accessibility.

To request a more accessible version of this report, please contact the TCEQ Help Desk at (512) 239-4357.



# Compliance History Report

**PUBLISHED** Compliance History Report for CN603128927, RN103157715, Rating Year 2013 which includes Compliance History (CH) components from September 1, 2008, through August 31, 2013.

<b>Customer, Respondent, or Owner/Operator:</b>	CN603128927, Bryan Iron & Metal, Ltd.	<b>Classification:</b> UNCLASSIFIED	<b>Rating:</b> -----
<b>Regulated Entity:</b>	RN103157715, Texas Commercial Waste	<b>Classification:</b> UNCLASSIFIED	<b>Rating:</b> -----
<b>Complexity Points:</b>	1	<b>Repeat Violator:</b>	NO
<b>CH Group:</b>	14 - Other		
<b>Location:</b>	1820 N HARVEY MITCHELL PKWY BRYAN, TX 77807-1200, BRAZOS COUNTY		
<b>TCEQ Region:</b>	REGION 09 - WACO		
<b>ID Number(s):</b>	SLUDGE REGISTRATION 21850		
<b>Compliance History Period:</b>	September 01, 2008 to August 31, 2013	<b>Rating Year:</b> 2013	<b>Rating Date:</b> 09/01/2013
<b>Date Compliance History Report Prepared:</b>	January 07, 2014		
<b>Agency Decision Requiring Compliance History:</b>	Enforcement		
<b>Component Period Selected:</b>	January 07, 2009 to January 07, 2014		
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>			
<b>Name:</b>	Thomas Greimel	<b>Phone</b>	(512) 239-5690

## Site and Owner/Operator History:

- |  |     |
|--|-----|
| 1) Has the site been in existence and/or operation for the full five year compliance period?       | YES |
| 2) Has there been a (known) change in ownership/operator of the site during the compliance period? | NO  |
| 3) If <b>YES</b> for #2, who is the current owner/operator?  | N/A |
| 4) If <b>YES</b> for #2, who was/were the prior owner(s)/operator(s)?                              | N/A |
| 5) If <b>YES</b> , when did the change(s) in owner or operator occur?                              | N/A |

## Components (Multimedia) for the Site Are Listed in Sections A - J

- A. Final Orders, court judgments, and consent decrees:**  
N/A
- B. Criminal convictions:**  
N/A
- C. Chronic excessive emissions events:**  
N/A
- D. The approval dates of investigations (CCEDS Inv. Track. No.):**  
N/A
- E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

**G. Type of environmental management systems (EMSs):**

N/A

**H. Voluntary on-site compliance assessment dates:**

N/A

**I. Participation in a voluntary pollution reduction program:**

N/A

**J. Early compliance:**

N/A

**Sites Outside of Texas:**

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING  
BRYAN IRON & METAL, LTD.  
DBA TEXAS COMMERCIAL  
WASTE  
RN103157715

§ BEFORE THE  
§  
§  
§ TEXAS COMMISSION ON  
§  
§  
§ ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2014-0034-MSW-E

### I. JURISDICTION AND STIPULATIONS

On \_\_\_\_\_, the Texas Commission on Environmental Quality ("the Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Bryan Iron & Metal, Ltd. dba Texas Commercial Waste ("Respondent") under the authority of TEX. HEALTH & SAFETY CODE ch. 361 and TEX. WATER CODE ch. 7. The Executive Director of the TCEQ, through the Enforcement Division, and the Respondent together stipulate that:

1. The Respondent owns and operates a recycling facility located at 1820 North Harvey Mitchell Parkway in Bryan, Brazos County, Texas (the "Facility").
2. The Facility involves the management of municipal solid waste as defined in TEX. HEALTH & SAFETY CODE ch. 361.
3. The Executive Director and the Respondent agree that the Commission has jurisdiction to enter this Agreed Order, and that the Respondent is subject to the Commission's jurisdiction.
4. The Respondent received notice of the violations alleged in Section II ("Allegations") on or about December 14, 2013.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by the Respondent of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of Sixteen Thousand Two Hundred Fifty Dollars (\$16,250) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). The Respondent has paid Thirteen Thousand Dollars (\$13,000) of the administrative penalty and Three Thousand Two Hundred Fifty Dollars (\$3,250) is deferred contingent upon the Respondent's timely and satisfactory compliance with all the terms of this Agreed Order. The deferred amount will be waived upon full compliance with the terms of this Agreed Order. If the Respondent fails to timely and satisfactorily comply with all requirements of this Agreed Order, the Executive Director may require the Respondent to pay all or part of the deferred penalty.
7. Any notice and procedures, which might otherwise be authorized or required in this action, are waived in the interest of a more timely resolution of the matter.
8. The Executive Director and the Respondent agree on a settlement of the matters alleged in this enforcement action, subject to final approval in accordance with 30 TEX. ADMIN. CODE § 70.10(a).
9. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that the Respondent has not complied with one or more of the terms or conditions in this Agreed Order.
10. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.
11. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

As owner and operator of the Facility, the Respondent is alleged to have:

1. Failed to submit a notification to the Executive Director prior to commencement of recycling operations, in violation of 30 TEX. ADMIN. CODE §§ 328.5(b) and 330.11(e)(2), as documented during an investigation conducted on October 2, 1013. Specifically, the Respondent collected plastic bottles, plastic bags, glass bottles, and cardboard before submitting a notification.
2. Failed to have a fire prevention and suppression plan and failing to make available a fire prevention and suppression plan to the local fire prevention authority, in violation of 30 TEX. ADMIN. CODE § 328.5(h), as documented during an investigation conducted on October 2, 1013.
3. Failed to establish and maintain financial assurance for the closure of a recycling facility, in violation of 30 TEX. ADMIN. CODE §§ 37.921 and 328.5(d), as documented during an investigation conducted on October 2, 1013. Specifically, financial assurance was not provided for approximately 8,000 pounds of plastic bags, 33,000 pounds of plastic bottles, 32,625 pounds of cardboard, and 57,100 pounds of glass bottles.



### III. DENIALS

The Respondent generally denies each allegation in Section II ("Allegations").

### IV. ORDERING PROVISIONS

1. It is, therefore, ordered by the TCEQ that the Respondent pay an administrative penalty as set forth in Section I, Paragraph 6 above. The payment of this administrative penalty and the Respondent's compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "TCEQ" and shall be sent with the notation "Re: Bryan Iron & Metal, Ltd. dba Texas Commercial Waste, Docket No. 2014-0034-MSW-E" to:

Financial Administration Division, Revenue Operations Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088

2. It is further ordered that the Respondent shall undertake the following technical requirements:
  - a. Immediately upon the effective date of this Agreed Order, cease accepting additional recyclable and combustible materials until such time that all requirements of a Notice of Intent for the Facility have been approved by the Executive Director;
  - b. Within 30 days after the effective date of this Agreed Order, develop a fire suppression and prevention plan for combustible materials at the Facility and provide it to the local fire prevention authority, in accordance with 30 TEX. ADMIN. CODE § 328.5; and
  - c. Within 60 days after the effective date of this Agreed Order, submit documentation that demonstrates acceptable financial assurance for closure of the Facility, in accordance with 30 TEX. ADMIN. CODE §§ 37.921 and 328.5.

Or

- d. Within 75 days after the effective date of this Agreed Order, dispose of all recyclable and combustible materials at an authorized facility.
- e. Within 90 days after the effective date of this Agreed Order, submit written certification as described below, and include detailed supporting documentation including photographs, receipts, and/or other records to demonstrate compliance with Ordering Provision Nos. 2.a. through 2.c. or 2.d. The certification shall be notarized by a State of Texas Notary Public and include the following certification language:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations."

The certification shall be submitted to:

Order Compliance Team  
Enforcement Division, MC 149A  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

with a copy to:

Waste Section Manager  
Waco Regional Office  
Texas Commission on Environmental Quality  
6801 Sanger Avenue, Suite 2500  
Waco, Texas 76710-7826

3. The provisions of this Agreed Order shall apply to and be binding upon the Respondent. The Respondent is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
4. If the Respondent fails to comply with any of the Ordering Provisions in this Agreed Order within the prescribed schedules, and that failure is caused solely by an act of God, war, strike, riot, or other catastrophe, the Respondent's failure to comply is not a violation of this Agreed Order. The Respondent shall have the burden of establishing to the Executive Director's satisfaction that such an event has occurred. The Respondent shall notify the Executive Director within seven days after the Respondent becomes aware of a delaying event and shall take all reasonable measures to mitigate and minimize any delay.
5. The Executive Director may grant an extension of any deadline in this Agreed Order or in any plan, report, or other document submitted pursuant to this Agreed Order, upon a written and substantiated showing of good cause. All requests for extensions by the Respondent shall be made in writing to the Executive Director. Extensions are not effective until the Respondent receives written approval from the Executive Director. The determination of what constitutes good cause rests solely with the Executive Director.
6. This Agreed Order, issued by the Commission, shall not be admissible against the Respondent in a civil proceeding, unless the proceeding is brought by the OAG to: (1)

enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.

7. This Agreed Order may be executed in separate and multiple counterparts, which together shall constitute a single instrument. Any page of this Agreed Order may be copied, scanned, digitized, converted to electronic portable document format ("pdf"), or otherwise reproduced and may be transmitted by digital or electronic transmission, including but not limited to facsimile transmission and electronic mail. Any signature affixed to this Agreed Order shall constitute an original signature for all purposes and may be used, filed, substituted, or issued for any purpose for which an original signature could be used. The term "signature" shall include manual signatures and true and accurate reproductions of manual signatures created, executed, endorsed, adopted, or authorized by the person or persons to whom the signatures are attributable. Signatures may be copied or reproduced digitally, electronically, by photocopying, engraving, imprinting, lithographing, electronic mail, facsimile transmission, stamping, or any other means or process which the Executive Director deems acceptable. In this paragraph exclusively, the terms "electronic transmission", "owner", "person", "writing", and "written" shall have the meanings assigned to them under TEX. BUS. ORG. CODE § 1.002.
8. Under 30 TEX. ADMIN. CODE § 70.10(b), the effective date is the date of hand-delivery of the Order to the Respondent, or three days after the date on which the Commission mails notice of the Order to the Respondent, whichever is earlier.

## SIGNATURE PAGE

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

\_\_\_\_\_  
For the Commission

  
\_\_\_\_\_  
For the Executive Director


6/4/14  
\_\_\_\_\_  
Date

I, the undersigned, have read and understand the attached Agreed Order. I am authorized to agree to the attached Agreed Order on behalf of the entity indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that failure to comply with the Ordering Provisions, if any, in this order and/or failure to timely pay the penalty amount, may result in:

- A negative impact on compliance history;
- Greater scrutiny of any permit applications submitted;
- Referral of this case to the Attorney General's Office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions;
- Automatic referral to the Attorney General's Office of any future enforcement actions; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.

  
\_\_\_\_\_  
Signature

MARCH 31, 2014  
\_\_\_\_\_  
Date

RONALD SCHMIDT  
\_\_\_\_\_  
Name (Printed or typed)  
Authorized Representative of  
Bryan Iron & Metal, Ltd. dba Texas Commercial Waste

GENERAL MANAGER  
\_\_\_\_\_  
Title

**Instructions:** Send the original, signed Agreed Order with penalty payment to the Financial Administration Division, Revenue Operations Section at the address in Section IV, Paragraph 1 of this Agreed Order.